

**SPOUSES GORGONIO BENATIRO AND COLUMBA CUYOS-BENATIRO
SUBSTITUTED BY THEIR HEIRS, NAMELY: ISABELITA, RENATO,
ROSADELIA AND GORGONIO, JR., SURNAMED BENATIRO, AND
SPOUSES RENATO C....**

G.R. No. 161220. July 30, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court filed by petitioners seeking to annul the Decision[1] dated July 18, 2003 of the Court of Appeals (CA) and its Resolution[2] dated November 13, 2003 denying petitioners' motion for reconsideration issued in CA-G.R. SP No. 65630.[3]

Spouses Evaristo Cuyos and Agatona Arrogrande Cuyos were blessed with nine children, namely: Francisco, Victoria, Columba, Lope, Salud, Gloria, Patrocenia, Numeriano, and Enrique. On August 28, 1966, Evaristo died leaving six parcels of land located in Tapilon, Daanbantayan, Cebu covered by Tax Declaration (TD) Nos. 000725, 000728, 000729, 000730, 000731, 000732, all under the name of Agatona Arrogrande.

On July 13, 1971, one of the heirs, Gloria Cuyos-Talian (respondent Gloria) represented by Atty. Victor Elliot Lepiten (Atty. Lepiten), filed before the Court of First Instance (CFI) now Regional Trial Court (RTC), Cebu, Branch XI, a petition[4] for Letters of Administration, docketed as Special Proceeding (SP) No. 24-BN entitled "In the Matter of the Intestate Estate of Evaristo Cuyos, Gloria Cuyos-Talian, petitioner." The petition was opposed by Gloria's brother, Francisco, who was represented by Atty. Jesus Yray (Atty. Yray).

In the hearing held on January 30, 1973, both parties together with their respective counsels appeared. Both counsels manifested that the parties had come to an agreement to settle their case. The trial court on even date issued an Order[5] appointing Gloria as administratrix of the estate. The dispositive portion reads:

WHEREFORE, letters of administration of the estate of the late Evaristo Cuyos and including the undivided half accruing to his spouse Agatona Arrogrande who recently died is hereby issued in favor of Mrs. Gloria Cuyos Talian who may qualify as such administratrix after posting a nominal bond of P1,000.00.[6]

Subsequently, in the Order[7] dated December 12, 1975, the CFI stated that when the Intestate Estate hearing was called on that date, respondent Gloria and her brother, oppositor Francisco, together with their respective counsels, appeared; that Atty. Yray, Francisco's counsel, manifested that the parties had come to an agreement to settle the case amicably; that both counsels suggested that the Clerk of Court, Atty. Andres C. Taneo (Atty. Taneo), be appointed to act as Commissioner to effect the agreement of the parties and to prepare the project of partition for the approval of the court. In the same Order, the Court of First Instance (CFI) appointed Atty. Taneo and ordered him to make a project of partition within 30 days from December 12, 1975 for submission and approval of the court.

In his Commissioner's Report[8] dated July 29, 1976, Atty. Taneo stated that he issued subpoenae supplemented

by telegrams to all the heirs to cause their appearance on February 28 and 29, 1976 in Tapilon, Daanbantayan, Cebu, where the properties are located, for a conference or meeting to arrive at an agreement; that out of the nine heirs, only respondents Gloria, Salud and Enrique Cuyos failed to attend; that per return of the service, these three heirs could not be located in their respective given addresses; that since some of the heirs present resided outside the province of Cebu, they decided to go ahead with the scheduled meeting.

Atty. Taneo declared in his Report that the heirs who were present:

- Agreed to consider all income of the properties of the estate during the time that Francisco Cuyos, one of the heirs, was administering the properties of the estate (without appointment from the Court) as having been properly and duly accounted for.
- Agreed to consider all income of the properties of the estate during the administration of Gloria Cuyos Talian, (duly appointed by the Court) also one of the heirs as having been properly and duly accounted for.
- Agreed to consider all motions filed in this proceedings demanding an accounting from Francisco Cuyos and Gloria Cuyos Talian, as having been withdrawn.
- Agreed not to partition the properties of the estate but instead agreed to first sell it for the sum of P40,000.00 subject to the condition that should any of the heirs would be in a position to buy the properties of the estate, the rest of the eight (8) heirs will just receive only Four Thousand Pesos (P4,000.00) each.
- Agreed to equally divide the administration expenses to be deducted from their respective share of P4,000.00.[9]

The Report further stated that Columba Cuyos-Benatiro (Columba), one of the heirs, informed all those present in the conference of her desire to buy the properties of the estate, to which everybody present agreed, and considered her the buyer. Atty. Taneo explained that the delay in the submission of the Report was due to the request of respondent Gloria that she be given enough time to make some consultations on what was already agreed upon by the majority of the heirs; that it was only on July 11, 1976 that the letter of respondent Gloria was handed to Atty. Taneo, with the information that respondent Gloria was amenable to what had been agreed upon, provided she be given the sum of P5,570.00 as her share of the estate, since one of properties of the estate was mortgaged to her in order to defray their father's hospitalization.

Quoting the Commissioner's Report, the CFI issued the assailed Order[10] dated December 16, 1976, the dispositive portion of which reads as follows:

WHEREFORE, finding the terms and conditions agreed upon by the heirs to be in order, the same being not contrary to law, said compromise agreement as embodied in the report of the commissioner is hereby approved. The Court hereby orders the Administratrix to execute the deed of sale covering all the properties of the estate in favor of Columba Cuyos Benatiro after the payment to her of the sum of P36,000.00. The said sum of money shall remain in custodia legis, but after all the claims and administration expenses and the estate taxes shall have been paid for, the remainder shall, upon order of the Court, be divided equally among the heirs. [11]

The CFI disapproved the claim of respondent Gloria for the sum of P5,570.00, as the same had been allegedly disregarded by the heirs present during the conference.

In an Order[12] dated January 11, 1978, the CFI appointed Lope Cuyos (Cuyos) as the new administrator of the estate, purportedly on the basis of the motion to relieve respondent Gloria, as it appeared that she was already residing in Central Luzon and her absence was detrimental to the early termination of the proceedings.

On May 25, 1979, administrator Cuyos executed a Deed of Absolute Sale[13] over the six parcels of land

constituting the intestate estate of the late Evaristo Cuyos in favor of Columba for a consideration of the sum of P36,000.00.

Sometime in February 1998, the heirs of Evaristo Cuyos, namely: Gloria Cuyos-Talian, Patrocenia Cuyos-Mijares, Numeriano Cuyos and Enrique Cuyos, represented by their attorney-in-fact, Salud Cuyos (respondents), allegedly learned that Tax Declaration Nos. 000725, 000728, 000729, 000730, 000731 and 000732, which were all in the name of their late mother Agatona Arrogante, were canceled and new Tax Declaration Nos., namely, 20-14129, 20-14130, 20-141131, 20-14132, 2014133 and 20-14134, were issued in Columba's name; and that later on, Original Certificates of Titles covering the estate of Evaristo Cuyos were issued in favor of Columba; that some of these parcels of land were subsequently transferred to the names of spouses Renato C. Benatiro and Rosie M. Benatiro, son and daughter-in-law, respectively, of petitioners Gorgonio and Columba, for which transfer certificates of title were subsequently issued; that they subsequently discovered the existence of the assailed CFI Order dated December 16, 1976 and the Deed of Absolute Sale dated May 25, 1979.

Respondents filed a complaint against petitioner Gorgonio Benatiro before the Commission on the Settlement of Land Problems (COSLAP) of the Department of Justice, which on June 13, 2000 dismissed the case for lack of jurisdiction.[14]

Salud Cuyos brought the matter for conciliation and mediation at the barangay level, but was unsuccessful.[15]

On July 16, 2001, Salud Cuyos, for herself and in representation[16] of the other heirs of Evaristo Cuyos, namely: Gloria, Patrocenia, Numeriano,[17] and Enrique, filed with the CA a petition for annulment of the Order dated December 16, 1976 of the CFI of Cebu, Branch XI, in SP No. 24-BN under Rule 47 of the Rules of Court. They alleged that the CFI Order dated December 16, 1976 was null and void and of no effect, the same being based on a Commissioner's Report, which was patently false and irregular; that such report practically deprived them of due process in claiming their share of their father's estate; that Patrocenia Cuyos-Mijares executed an affidavit, as well as the unnotarized statement of Gloria stating that no meeting ever took place for the purpose of discussing how to dispose of the estate of their parents and that they never received any payment from the supposed sale of their share in the inheritance; that the report was done in close confederacy with their co-heir Columba, who stood to be benefited by the Commissioner's recommendation, should the same be approved by the probate court; that since the report was a falsity, any order proceeding therefrom was invalid; that the issuance of the certificates of titles in favor of respondents were tainted with fraud and irregularity, since the CFI which issued the assailed order did not appear to have been furnished a copy of the Deed of Absolute Sale; that the CFI was not in custodia legis of the consideration of the sale, as directed in its Order so that it could divide the remainder of the consideration equally among the heirs after paying all the administration expenses and estate taxes; that the intestate case had not yet been terminated as the last order found relative to the case was the appointment of Lope as administrator vice Gloria; that they never received their corresponding share in the inheritance; and that the act of petitioners in manifest connivance with administrator Lope amounted to a denial of their right to the property without due process of law, thus, clearly showing that extrinsic fraud caused them to be deprived of their property.

Herein petitioners contend that respondents' allegation that they discovered the assailed order dated December 16, 1976 only in February 1998 was preposterous, as respondents were represented by counsel in the intestate proceedings; thus, notice of Order to counsel was notice to client; that this was only a ploy so that they could claim that they filed the petition for annulment within the statutory period of four (4) years; that they have been in possession of the six parcels of land since May 25, 1979 when the same was sold to them pursuant to the assailed Order in the intestate proceedings; that no extrinsic fraud attended the issuance of the assailed order; that Numeriano executed an affidavit in which he attested to having received his share of the sale proceeds on May 18,

1988; that respondents were estopped from assailing the Order dated December 16, 1976, as it had already attained the status of finality.

On July 18, 2003, the CA granted the petition and annulled the CFI order, the dispositive portion of which reads:

FOR ALL THE FOREGOING REASONS, the instant petition is hereby GRANTED. Accordingly, the Order issued by the Court of First Instance of Cebu Branch XI dated December 16, 1976 as well as the Certificates of Title issued in the name of Columba Cuyos-Benatiro and the subsequent transfer of these Titles in the name of spouses Renato and Rosie Benatiro are hereby ANNULLED and SET ASIDE. Further, SP Proc. Case No. 24-BN is hereby ordered reopened and proceedings thereon be continued.[18]

The CA declared that the ultimate fact that was needed to be established was the veracity and truthfulness of the Commissioner's Report, which was used by the trial court as its basis for issuing the assailed Order. The CA held that to arrive at an agreement, there was a need for all the concerned parties to be present in the conference; however, such was not the scenario since in their separate sworn statements, the compulsory heirs of the decedent attested to the fact that no meeting or conference ever happened among them; that although under Section 3(m), Rule 133 on the Rules of Evidence, there is a presumption of regularity in the performance of an official duty, the same may be contradicted and overcome by other evidence to prove the contrary.

The CA noted some particulars that led it to conclude that the conference was not held accordingly, to wit: (1) the Commissioner's Report never mentioned the names of the heirs who were present in the alleged conference but only the names of those who were absent, when the names of those who were present were equally essential, if not even more important, than the names of those who were absent; (2) the Report also failed to include any proof of conformity to the agreement from the attendees, such as letting them sign the report to signify their consent as regards the agreed mechanisms for the estate's settlement; (3) there was lack or absence of physical evidence attached to the report indicating that the respondents were indeed properly notified about the scheduled conference. The CA then concluded that due to the absence of the respondents' consent, the legal existence of the compromise agreement did not stand on a firm ground.

The CA further observed that although it appeared that notice of the report was given to Atty. Lepiten and Atty. Yray, lawyers of Gloria and Francisco Cuyos, respectively, the same cannot be taken as notice to the other heirs of Evaristo Cuyos; that a lawyer's authority to compromise cannot be simply presumed, since what was required was the special authority to compromise on behalf of his client; that a compromise agreement entered into by a person not duly authorized to do so by the principal is void and has no legal effect, citing *Quiban v. Butalid*;^[19] that being a void compromise agreement, the assailed Order had no legal effect.

Thus, the CA ruled that the Certificates of Titles obtained by herein petitioners were procured fraudulently; that the initial transfer of the properties to Columba Cuyos-Benatiro by virtue of a Deed of Absolute Sale executed by Lope Cuyos was clearly defective, since the compromise agreement which served as the basis of the Deed of Absolute Sale was void and had no legal effect.

The CA elaborated that there was no showing that Columba paid the sum of P36,000.00 to the administrator as consideration for the sale, except for the testimony of Numeriano Cuyos admitting that he received his share of the proceeds but without indicating the exact amount that he received; that even so, such alleged payment was incomplete and was not in compliance with the trial court's order for the administratrix to execute the deed of sale covering all properties of the estate in favor of Columba Cuyos-Benatiro after the payment to the administratrix of the sum of P36,000.00; that said sum of money shall remain in custodia legis, but after all the claims and administration expenses and the estate taxes shall have been paid for, the remainder shall, upon order of the Court, be divided equally among the heirs.

Moreover, the CA found that the copy of the Deed of Sale was not even furnished the trial court nor was said money placed under custodia legis as agreed upon; that the Certification dated December 9, 1998 issued by the Clerk of Court of Cebu indicated that the case had not yet been terminated and that the last Order in the special proceeding was the appointment of Lope Cuyos as the new administrator of the estate; thus, the transfer of the parcels of land, which included the execution of the Deed of Absolute Sale, cancellation of Tax Declarations and the issuance of new Tax Declarations and Transfer Certificates of Title, all in favor of petitioners, were tainted with fraud. Consequently, the CA concluded that the compromise agreement, the certificates of title and the transfers made by petitioners through fraud cannot be made a legal basis of their ownership over the properties, since to do so would result in enriching them at the expense of the respondents; and that it was also evident that the fraud attendant in this case was one of extrinsic fraud, since respondents were denied the opportunity to fully litigate their case because of the scheme utilized by petitioners to assert their claim.

Hence, herein petition raising the following issues:

Whether or not annulment of order under Rule 47 of the Rules of Court was a proper remedy where the aggrieved party had other appropriate remedies, such as new trial, appeal, or petition for relief, which they failed to take through their own fault.

Whether or not the Court of Appeals misapprehended the facts when it annulled the 24 year old Commissioner's Report of the Clerk of Court - an official act which enjoys a strong presumption of regularity - based merely on belated allegations of irregularities in the performance of said official act.

Whether or not upon the facts as found by the Court of Appeals in this case, extrinsic fraud existed which is a sufficient ground to annul the lower court's order under Rule 47 of the Rules of Court. [20]

Subsequent to the filing of their petition, petitioners filed a Manifestation that they were in possession of affidavits of waiver and desistance executed by the heirs of Lope Cuyos[21] and respondent Patrocenia Cuyos-Mijares[22] on February 17, 2004 and December 17, 2004, respectively. In both affidavits, the affiants stated that they had no more interest in prosecuting/defending the case involving the settlement of the estate, since the subject estate properties had been bought by their late sister Columba, and they had already received their share of the purchase price. Another heir, respondent Numeriano Cuyos, had also earlier executed an Affidavit[23] dated December 13, 2001, stating that the subject estate was sold to Columba and that she had already received her share of the purchase price on May 18, 1988. In addition, Numeriano had issued a certification[24] dated May 18, 1988, which was not refuted by any of the parties, that he had already received P4,000.00 in payment of his share, which could be the reason why he refused to sign the Special Power of Attorney supposedly in favor of Salud Cuyos for the filing of the petition with the CA.

The issue for resolution is whether the CA committed a reversible error in annulling the CFI Order dated December 16, 1976, which approved the Commissioner's Report embodying the alleged compromise agreement entered into by the heirs of Evaristo and Agatona Arrogante Cuyos.

We rule in the negative.

The remedy of annulment of judgment is extraordinary in character[25] and will not so easily and readily lend itself to abuse by parties aggrieved by final judgments. Sections 1 and 2 of Rule 47 impose strict conditions for recourse to it, viz.:

Section 1. Coverage. — This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

Section 2. Grounds for annulment. — The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

Although Section 2 of Rule 47 of the Rules of Court provides that annulment of a final judgment or order of an RTC may be based "only on the grounds of extrinsic fraud and lack of jurisdiction," jurisprudence recognizes denial of due process as additional ground therefor.[26]

An action to annul a final judgment on the ground of fraud will lie only if the fraud is extrinsic or collateral in character.[27] Extrinsic fraud exists when there is a fraudulent act committed by the prevailing party outside of the trial of the case, whereby the defeated party was prevented from presenting fully his side of the case by fraud or deception practiced on him by the prevailing party.[28] Fraud is regarded as extrinsic where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured. The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court. [29]

While we find that the CA correctly annulled the CFI Order dated December 16, 1976, we find that it should be annulled not on the ground of extrinsic fraud, as there is no sufficient evidence to hold Atty. Taneo or any of the heirs guilty of fraud, but on the ground that the assailed order is void for lack of due process.

Clerk of Court Taneo was appointed to act as Commissioner to effect the agreement of the heirs and to prepare the project of partition for submission and approval of the court. Thus, it was incumbent upon Atty. Taneo to set a time and place for the first meeting of the heirs. In his Commissioner's Report, Atty. Taneo stated that he caused the appearance of all the heirs of Evaristo Cuyos and Agatona Arrogante Cuyos in the place, where the subject properties were located for settlement, by sending them subpoenae supplemented by telegrams for them to attend the conference scheduled on February 28 to 29, 1976. It was also alleged that out of the nine heirs, only six attended the conference; however, as the CA aptly found, the Commissioner did not state the names of those present, but only those heirs who failed to attend the conference, namely: respondents Gloria, Salud and Enrique who, as stated in the Report, based on the return of service, could not be located in their respective given addresses.

However, there is nothing in the records that would establish that the alleged subpoenae, supplemented by telegrams, for the heirs to appear in the scheduled conference were indeed sent to the heirs. In fact, respondent Patrocenia Cuyos-Mijares, one of the heirs, who was presumably present in the conference, as she was not mentioned as among those absent, had executed an affidavit[30] dated December 8, 1998 attesting, to the fact that she was not called to a meeting nor was there any telegram or notice of any meeting received by her. While Patrocenia had executed on December 17, 2004 an Affidavit of Waiver and Desistance[31] regarding this case, it was only for the reason that the subject estate properties had been bought by their late sister Columba, and that she had already received her corresponding share of the purchase price, but there was nothing in the affidavit that retracted her previous statement that she was not called to a meeting. Respondent Gloria also made an unnotarized statement[32] that there was no meeting held. Thus, the veracity of Atty. Taneo's holding of a conference with the heirs was doubtful.

Moreover, there was no evidence showing that the heirs indeed convened for the purpose of arriving at an agreement regarding the estate properties, since they were not even required to sign anything to show their attendance of the alleged meeting. In fact, the Commissioner's Report, which embodied the alleged agreement of

the heirs, did not bear the signatures of the alleged attendees to show their consent and conformity thereto.

It bears stressing that the purpose of the conference was for the heirs to arrive at a compromise agreement over the estate of Evaristo Cuyos. Thus, it was imperative that all the heirs must be present in the conference and be heard to afford them the opportunity to protect their interests. Considering that no separate instrument of conveyance was executed among the heirs embodying their alleged agreement, it was necessary that the Report be signed by the heirs to prove that a conference among the heirs was indeed held, and that they conformed to the agreement stated in the Report.

Petitioners point out that the Commissioner was an officer of the court and a disinterested party and that, under Rule 133, Section 3(m) of the Rules on Evidence, there is a presumption that official duty has been regularly performed.

While, under the general rule, it is to be presumed that everything done by an officer in connection with the performance of an official act in the line of his duty was legally done, such presumption may be overcome by evidence to the contrary. We find the instances mentioned by the CA, such as absence of the names of the persons present in the conference, absence of the signatures of the heirs in the Commissioner's Report, as well as absence of evidence showing that respondents were notified of the conference, to be competent proofs of irregularity that rebut the presumption.

Thus, we find no reversible error committed by the CA in ruling that the conference was not held accordingly and in annulling the assailed order of the CFI.

Petitioners attached a Certification^[33] dated August 7, 2003 issued by the Officer In Charge (OIC), Branch Clerk of Court of the RTC, Branch 11, to show that copies of the Commissioner's Report were sent to all the heirs, except Salud and Enrique, as well as to Attys. Lepiten and Yray as enumerated in the Notice found at the lower portion of the Report with the accompanying registry receipts.^[34]

In *Cua v. Vargas*,^[35] in which the issue was whether heirs were deemed constructively notified of and bound by an extra-judicial settlement and partition of the estate, regardless of their failure to participate therein, when the extra-judicial settlement and partition has been duly published, we held:

The procedure outlined in Section 1 of Rule 74 is an ex parte proceeding. The rule plainly states, however, that persons who do not participate or had no notice of an extrajudicial settlement will not be bound thereby. It contemplates a notice that has been sent out or issued before any deed of settlement and/or partition is agreed upon (i.e., a notice calling all interested parties to participate in the said deed of extrajudicial settlement and partition), and not after such an agreement has already been executed as what happened in the instant case with the publication of the first deed of extrajudicial settlement among heirs.

The publication of the settlement does not constitute constructive notice to the heirs who had no knowledge or did not take part in it because the same was notice after the fact of execution. The requirement of publication is geared for the protection of creditors and was never intended to deprive heirs of their lawful participation in the decedent's estate. In this connection, the records of the present case confirm that respondents never signed either of the settlement documents, having discovered their existence only shortly before the filing of the present complaint. Following Rule 74, these extrajudicial settlements do not bind respondents, and the partition made without their knowledge and consent is invalid insofar as they are concerned^[36] (Emphasis supplied)

Applying the above-mentioned case by analogy, what matters is whether the heirs were indeed notified before the compromise agreement was arrived at, which was not established, and not whether they were notified of the Commissioner's Report embodying the alleged agreement afterwards.

We also find nothing in the records that would show that the heirs were called to a hearing to validate the Report.

The CFI adopted and approved the Report despite the absence of the signatures of all the heirs showing conformity thereto. The CFI adopted the Report despite the statement therein that only six out of the nine heirs attended the conference, thus, effectively depriving the other heirs of their chance to be heard. The CFI's action was tantamount to a violation of the constitutional guarantee that no person shall be deprived of property without due process of law. We find that the assailed Order dated December 16, 1976, which approved a void Commissioner's Report, is a void judgment for lack of due process.

We are not persuaded by petitioners' contentions that all the parties in the intestate estate proceedings in the trial court were duly represented by respective counsels, namely, Atty. Lepiten for petitioners-heirs and Atty. Yray for the oppositors-heirs; that when the heirs agreed to settle the case amicably, they manifested such intention through their lawyers, as stated in the Order dated January 30, 1973; that an heir in the settlement of the estate of a deceased person need not hire his own lawyer, because his interest in the estate is represented by the judicial administrator who retains the services of a counsel; that a judicial administrator is the legal representative not only of the estate but also of the heirs, legatees, and creditors whose interest he represents; that when the trial court issued the assailed Order dated December 16, 1976 approving the Commissioner's Report, the parties' lawyers were duly served said copies of the Order on December 21, 1976 as shown by the Certification^[37] dated August 7, 2003 of the RTC OIC, Clerk of Court; that notices to lawyers should be considered notices to the clients, since, if a party is represented by counsel, service of notices of orders and pleadings shall be made upon the lawyer; that upon receipt of such order by counsels, any one of the respondents could have taken the appropriate remedy such as a motion for reconsideration, a motion for new trial or a petition for relief under Rule 38 at the proper time, but they failed to do so without giving any cogent reason for such failure.

While the trial court's order approving the Commissioner's Report was received by Attys. Yray and Lepiten, they were the lawyers of Gloria and Francisco, respectively, but not the lawyers of the other heirs. As can be seen from the pleadings filed before the probate court, Atty. Lepiten was Gloria's counsel when she filed her Petition for letters of administration, while Atty. Yray was Francisco's lawyer when he filed his opposition to the petition for letters of administration and his Motion to Order administratrix Gloria to render an accounting and for the partition of the estate. Thus, the other heirs who were not represented by counsel were not given any notice of the judgment approving the compromise. It was only sometime in February 1998 that respondents learned that the tax declarations covering the parcels of land, which were all in the name of their late mother Agatona Arrogante, were canceled; and new Tax Declarations were issued in Columba's name, and Original Certificates of Titles were subsequently issued in favor of Columba. Thus, they could not have taken an appeal or other remedies.

Considering that the assailed Order is a void judgment for lack of due process of law, it is no judgment at all. It cannot be the source of any right or of any obligation.^[38]

In *Nazareno v. Court of Appeals*,^[39] we stated the consequences of a void judgment, thus:

A void judgment never acquires finality. Hence, while admittedly, the petitioner in the case at bar failed to appeal timely the aforementioned decision of the Municipal Trial Court of Naic, Cavite, it cannot be deemed to have become final and executory. In contemplation of law, that void decision is deemed non-existent. Thus, there was no effective or operative judgment to appeal from. In *Metropolitan Waterworks & Sewerage System vs. Sison*, this Court held that:

x x x [A] void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. All proceedings founded on the void judgment are themselves

regarded as invalid. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there were no judgment. It, accordingly, leaves the parties litigants in the same position they were in before the trial.

Thus, a void judgment is no judgment at all. It cannot be the source of any right nor of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final and any writ of execution based on it is void: "x x x it may be said to be a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head." [40] (Emphasis supplied)

The CFI's order being null and void, it may be assailed anytime, collaterally or in a direct action or by resisting such judgment or final order in any action or proceeding whenever it is invoked, unless barred by laches. [41] Consequently, the compromise agreement and the Order approving it must be declared null and void and set aside.

We find no merit in petitioners' claim that respondents are barred from assailing the judgment after the lapse of 24 years from its finality on ground of laches and estoppel.

Section 3, Rule 47 of the Rules of Court provides that an action for annulment of judgment based on extrinsic fraud must be filed within four years from its discovery and, if based on lack of jurisdiction, before it is barred by laches or estoppel.

The principle of laches or "stale demands" ordains that the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier, or the negligence or omission to assert a right within a reasonable time, warrants a presumption that the party entitled to assert it either has abandoned it or declined to assert it. [42]

There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances. [43] The question of laches is addressed to the sound discretion of the court and, being an equitable doctrine, its application is controlled by equitable considerations. It cannot be used to defeat justice or perpetrate fraud and injustice. It is the better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to be so, a manifest wrong or injustice would result. [44]

In this case, respondents learned of the assailed order only sometime in February 1998 and filed the petition for annulment of judgment in 2001. Moreover, we find that respondents' right to due process is the paramount consideration in annulling the assailed order. It bears stressing that an action to declare the nullity of a void judgment does not prescribe. [45]

Finally, considering that the assailed CFI judgment is void, it has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is non-existent. Hence, the execution of the Deed of Sale by Lope in favor of Columba pursuant to said void judgment, the issuance of titles pursuant to said Deed of Sale, and the subsequent transfers are void ab initio. No reversible error was thus committed by the CA in annulling the judgment.

WHEREFORE, the petition is DENIED and the Decision dated July 18, 2003 and Resolution dated November 13, 2003 of the Court of Appeals are AFFIRMED. The Regional Trial Court, Branch XI, Cebu and the Heirs of Evaristo Cuyos are DIRECTED to proceed with SP Proceedings Case No. 24-BN for the settlement of the Estate of Evaristo Cuyos.

No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Penned by Justice Eloy R. Bello, Jr. and concurred in by Justices Cancio C. Garcia (former member of this Court) and Mariano C. del Castillo; rollo, pp. 32-39.

[2] Id. at 41.

[3] Entitled, "Heirs of Evaristo Cuyos represented by their Attorney-in-fact, Salud Cuyos, Petitioners, v. Court of First Instance of Cebu, Branch XI, Sps. Gorgonio Benatiro and Columba Cuyos-Benatiro and Sps. Renato C. Benatiro and Rosie M. Benatiro, Respondents."

[4] CA rollo, p.32

[5] Rollo, pp. 81-84.

[6] Id. at 84.

[7] Id. at 55.

[8] Rollo, pp. 56-59.

[9] Id. at 57.

[10] Rollo, pp. 60-63.

[11] Id. at 63.

[12] Id. at 78.

[13] Rollo, pp. 79-80.

[14] CA rollo, p. 62.

[15] Id. at 63.

[16] CA rollo, pp. 24-26; Special Power of Attorney.

[17] Refused to sign the Special Power of Attorney.

[18] Rollo, p. 39.

[19] G.R. No. 90974, August 27, 1990, 189 SCRA 107.

[20] Rollo, pp. 10-11.

[21] Id. at 124-125

[22] Id. at 123.

[23] Id. at 85.

[24] Id. at 86.

[25] Ramos v. Combong, Jr., G.R. No. 144273, October 20, 2005, 473 SCRA 499, 504.

[26] Intestate Estate of the Late Nimfa Sian v. Philippine National Bank, G.R. No. 168882, January 31, 2007, 513

SCRA 662, 668 citing *Mercado v. Security Bank Corporation*, G.R. No. 160445, February 16, 2006, 482 SCRA 501, 514; *Alaban v. Court of Appeals*, G.R. No. 156021, September 23, 2005, 470 SCRA 697, 707; *Hi-Tone Marketing Corporation v. Baikal Realty Corporation*, G.R. No. 149992, August 20, 2004, 437 SCRA 121, 131; *Salonga v. Court of Appeals*, G.R. No. 111478, March 13, 1997, 269 SCRA 534, 542; *Pinlac v. Court of Appeals*, G.R. No. 91486, January 19, 2001, 349 SCRA 635, 650; *Heirs of Pael v. Court of Appeals*, G.R. No. 133547, February 10, 2000, 325 SCRA 341, 358; *Lapulapu Development & Housing Corporation v. Risos*, G.R. No. 118633, September 6, 1996, 261 SCRA 517, 524; *Regidor v. Court of Appeals*, G.R. No. 78115, March 5, 1993, 219 SCRA 530, 534.

[27] RULES OF COURT, Rule 47, Section 2.

[28] *Alba v. Court of Appeals*, G.R. No. 164041, July 29, 2005, 465 SCRA 495, 508.

[29] *Tolentino v. Leviste*, G.R. No. 156118, November 19, 2004, 443 SCRA 274.

[30] CA rollo, p. 64.

[31] *Id.* at 123.

[32] CA rollo, p. 67.

[33] Rollo, Annex "H", p. 64.

[34] *Id.* at 75-76.

[35] G.R. No. 156536, October 31, 2006, 506 SCRA 374.

[36] *Id.* at 384-385.

[37] Rollo, Annex "H", p. 64.

[38] *Metropolitan Bank & Trust Company v. Alejo*, 417 Phil. 303, 316, 318 (2001).

[39] G.R. No. 111610, February 27, 2002, 378 SCRA 28. (2002).

[40] *Id.* at 35-36.

[41] *Intestate Estate of the Late Nimfa Sian v. Philippine National Bank*, *supra* note 26, at 670.

[42] *Chua v. Court of Appeals*, G.R. No. 125837, October 6, 2004, 440 SCRA 121, 135.

[43] *Far East Bank and Trust Company v. Querimit*, 424 Phil. 721, 732 (2002).

[44] *Ang Ping v. Court of Appeals*, 369 Phil. 607, 616 (1999).

[45] See *Paluwagan ng Bayan Savings Bank v. King*, G.R. No. 78252, April 12, 1989, 172 SCRA 60, 69 citing *Ang Lam v. Rosillosa and Santiago*, 86 Phil. 447, 45 (1950); *Vda de Macoy v. Court of Appeals*, G.R. No. 95871, February 13, 1992, 206 SCRA 244, 252.

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